

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DARREN SMITH,

Plaintiff,

v.

CITY OF QUINCY; WILLIAM
GONZALES; and SCOTT JONES,

Defendants.

NO: CV-09-328-RMP

ORDER ON PLAINTIFF'S MOTION
TO ALTER JUDGMENT

Before the Court is Plaintiff's Motion to Alter Judgment (Ct. Rec. 160). The parties also disagree about the bill of costs in this suit (Ct. Rec. 157-159; Ct. Rec. 162). Previously, the Court granted Defendants' motion for summary judgment and declined to exercise supplemental jurisdiction on the remaining state law claims (Ct. Rec. 153).

A. Motion to Alter Judgment

Background

In his response to Defendants' motion for summary judgment, Plaintiff argued that the City of Quincy retaliated against him after he made a public records

1 request.¹ Defendants interpreted this claim as an adverse employment reaction
2 claim and responded that Plaintiff had a causation flaw, as the alleged adverse
3 employment action occurred after resignation. The Court agreed.
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5 Plaintiff principally relied on *Blair v. Bethel School Dist.*, 608 F.3d 540, 543
6 (9th Cir. 2010). The plaintiff in *Bethel School Dist.* brought a retaliation suit for
7 exercising his First Amendment rights because he was removed from a board *after*
8 criticizing a superintendent. *Id.* at 543. Defendants contend that Plaintiff's
9 argument had a causation flaw because a party does not have a viable First
10 Amendment retaliatory claim for actions that occur after termination. The Court
11 agreed and referenced *Calhoun v. Liberty Northwest Ins. Corp.*, 789 F.Supp. 1540,
12 1548 (W.D.Wash. 1992), where the court found that a complaint filed a month
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17 ¹ More than a half of a year after leaving his employment at the City of Quincy and
18 while employed as an officer of the Grant County Sheriff's Office, Plaintiff
19 personally served the City of Quincy with public records requests relating to his
20 previously filed safety concerns (Ct. Rec. 57 at 10). That same day, Chief Gonzales
21 issued a memo to all personnel stating that he felt that Plaintiff Smith's "presence
22 causes an uncomfortable environment and a safety issue for my personnel" and
23 directing that "he is to go no further than the information window of our office and
24 not behind any locked doors" (Ct. Rec. 57-4 at 85).
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1 after a plaintiff's termination could not be the basis for a retaliatory action because
2 there is no causal connection between the protected activity and any adverse action
3 by the defendants.²
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5 **Applicable Law**

6 A motion to alter judgment is brought under Federal Rule of Civil Procedure
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8 59(e). *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983). An
9 amendment to a judgment is appropriate under Federal Rule of Civil Procedure
10 59(e) if: (1) there has been an intervening change of controlling law; (2) the district
11 court is presented with newly discovered evidence; or (3) the district court
12 committed clear error or made an initial decision that was manifestly unjust.
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14 *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001), citing, *School*
15 *Dist. No. 1J, Multnomah Co., Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
16 1993). The Ninth Circuit has recognized that in the interests of finality and
17 conservation of judicial resources, Rule 59(e) is an extraordinary remedy that is
18 used sparingly. *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
19 Cir. 2000); *McDowell v. Calderon*, 197 F.3d 1253, 1255, n. 1 (9th Cir. 1999).
20 Newly discovered evidence must have been previously unavailable. *Zimmerman v.*
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26 ² *Calhoun* was cited by Defendants in their memorandum in support of their motion
27 for summary judgment (Ct. Rec. 26 at 8). Plaintiff did not address the case.
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1 *City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). Clear error occurs when a
2 court's decision or action appears to have been "unquestionably erroneous."
3 BLACK'S LAW DICTIONARY, 8th Edition, 2009, p. 622. Similarly, manifest
4 injustice is defined as an error in the trial court that is "direct, obvious, and
5 observable" *Id.* p. 1048.
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8 **Discussion**

9 In his present motion, Plaintiff does not assert any change in controlling law.
10 Plaintiff does not present newly discovered evidence. Plaintiff does not claim that
11 the Court committed clear error. Rather, Plaintiff states that he "has not adequately
12 explained how [*Calhoun v. Liberty Northwest Ins. Corp.*, 789 F. Supp. 1540, 1548
13 (W. D. Wash. 1992)] is inapplicable to the case at bar" (Ct. Rec. 160 at 2).
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16 Additionally, Plaintiff now concedes that he could not have suffered an
17 adverse employment action when Chief Gonzales issued his memo, but Plaintiff
18 claims he still can pursue a claim for retaliation for exercising his right to free
19 speech as a private citizen. He again cites *Blair v. Bethel School Dist.*, 608 F.3d
20 540, 543 (9th Cir. 2010), for the elements.
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23 [P]laintiff must prove: (1) he engaged in constitutionally protected
24 activity; (2) as a result, he was subjected to adverse action by the
25 defendant that would chill a person of ordinary firmness from
26 continuing to engage in the protected activity; and (3) there was a
27 substantial causal relationship between the constitutionally protected
28 activity and the adverse action.

1 (*Id.*)

2 Defendants respond to Plaintiff's current motion by arguing that Plaintiff
3 fails to meet the requirements of a motion to alter a judgment. Defendants further
4 claim that even if the Court considers the motion on its merits, it would still fail
5 (Ct. Rec. 163 at 5).
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8 The Court agrees again with Defendants. Plaintiff has not claimed
9 any change in controlling law, presented newly discovered evidence, or claimed
10 that the Court committed clear error. *Zimmerman v. City of Oakland*, 255 F.3d
11 734, 740 (9th Cir. 2001). Accordingly, Plaintiff's motion to alter judgment fails.
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13 Assuming *arguendo* that Plaintiff had met this burden, the motion would fail
14 on its merits. The second element of *Blair* has not been met with the facts that
15 Plaintiff has alleged: Chief Gonzales' memo does not rise to a sufficient level to
16 chill an ordinary person's First Amendment rights. *Blair*, 608 F.3d at 544-46.
17 This is especially true where the memo was posted in the officer's quarters in the
18 back of the police station, and where Plaintiff continued to make public records
19 request after the memo was posted (Ct. Rec. 163 at 7).
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22 **B. Bill of Costs**

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24 On February 15, 2011, the Court filed an order directing entry of judgment.
25 In that order, the Court directed the Clerk of Court to enter judgment "without
26 costs to any party" (Ct. Rec. 154). Nevertheless, Defendants filed a proposed bill
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1 of costs with an accompanying declaration (Ct. Rec. 157, 158) and Plaintiff filed
2 an objection (Ct. Rec. 162). The Court uses its discretion under Fed. R. Civ. P.
3 54(d) and reaffirms its previous order to the Clerk of Court to enter judgment
4 without costs to any party because of the facts of the case and Plaintiff's remaining
5 state-law claims. Accordingly,
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8 **IT IS ORDERED:**

9 1. Plaintiff's Motion to Alter Judgment (**Ct. Rec. 160**) is **DENIED**.

10 The District Court Executive is directed to file this Order, provide copies to
11 counsel. The case is to **remain closed**.
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13 **DATED** this 4th day of April, 2011.
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15
16 s/ Rosanna Malouf Peterson
17 ROSANNA MALOUF PETERSON
18 United States District Court Judge
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